

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**MAR 06 2006**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DON PHILLIP PARKINSON,

Defendant - Appellant.

No. 05-50255

D.C. No. CR-04-00303-PA

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Percy Anderson, District Judge, Presiding

Argued and Submitted February 16, 2006  
Pasadena, California

Before: GOODWIN, B. FLETCHER, and CALLAHAN, Circuit Judges.

Parkinson appeals the district court's revocation of his supervised release for submitting an invalid urine sample incident to his drug rehabilitation program.

At the revocation hearing, the government called Parkinson's probation officer, Amy Young, to testify that Parkinson's urine sample was flushed (diluted

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

with water). One piece of objective evidence that the government used to prove that the sample was flushed was the specific gravity measurement taken at the time Parkinson submitted his sample. However, Probation Officer Richard Coleton, not Young, witnessed and tested Parkinson's urine sample. Coleton reported the results of the test to Young. The government sought to have Young recount Coleton's statements on the stand and Parkinson made a hearsay objection. The district court allowed Young's testimony over Parkinson's objection. Coleton was not called as a witness.

In addition to recounting Coleton's statements, Young also testified that she had spoken with Parkinson about the urinalysis prior to the day of testing. According to her testimony, in that conversation, Young told Parkinson that if he drank a lot of water prior to the test it could result in a flushed sample.

Parkinson then took the stand and admitted to drinking a lot of water before his drug test. Parkinson also admitted that he knew he was required to submit a valid urine sample, that a flushed sample was not valid, and that Young had told him drinking a lot of water could result in a flushed sample. Although he never told Young or Coleton at the time he submitted his sample, on the stand, Parkinson explained his high water consumption as a medical necessity.

Ultimately, the district court found that Parkinson submitted an invalid urine sample and revoked his supervised release. Parkinson argues that his due process right to confrontation was violated when the district court received Young's hearsay evidence. He also argues that this error was not harmless because the government needed the hearsay to revoke his release.

We have previously held that

[b]ecause revocation deprives an individual, not of the absolute liberty to which every citizen is entitled, but only of the conditional liberty properly dependent on observance of special parole restrictions[,] the full protection provided to criminal defendants, including the Sixth Amendment right to confrontation, does not apply to them. Rather, a due process standard is used to determine whether hearsay evidence admitted during revocation proceedings violates a defendant's rights.

*United States v. Hall*, 419 F.3d 980, 985 (9th Cir. 2005) (internal citations and quotations omitted). In cases involving a releasee's right to confrontation, the due process standard requires us to utilize the *Morrissey v. Brewer*, 408 U.S. 471 (1972), balancing test to "balanc[e] the [releasee's] right to confrontation against the Government's good cause for denying it," *United States v. Martin*, 984 F.2d 308, 310 (9th Cir. 1993) (internal quotations and citations omitted).

Parkinson's admissions and Young's nonhearsay statements were sufficient to establish that Parkinson had violated a condition of his supervised release and, therefore, the government did not need the hearsay to establish grounds for

revocation. Accordingly, Parkinson's interest in confronting the witness was weak. *See Hall*, 419 F.3d at 986-87 (finding that nonhearsay evidence, including admission by the defendant, was sufficient to establish violation and made defendant's interest in excluding hearsay evidence weak). The record in this case does not explain why the government failed to call Coleton. "Thus, no cause has been shown for denying [Parkinson] his confrontation rights - there is nothing at all to put on the Government's side of the scale." *United States v. Comito*, 177 F.3d 1166, 1172 (9th Cir. 1999).

Although Parkinson's interest in confronting the witness was weak, there is nothing to support the government's denial of that right. Weighing Parkinson's interest against the government's, Parkinson's weak interest prevails over the government's non-existent interest, and thus the district court erred in overruling the objection. Parkinson's due process confrontation right was, therefore, violated. The question then becomes whether this error was harmless beyond a reasonable doubt. *Id.* at 1170.

We hold that it was. Although Parkinson's admissions and Young's nonhearsay testimony are inconclusive, they are sufficient to establish that Parkinson knowingly submitted a diluted sample. Therefore, because the

nonhearsay evidence was sufficient to establish Parkinson's violation, the admission of the hearsay testimony was harmless beyond a reasonable doubt.

AFFIRMED.